

NATIONAL
INDIAN
GAMING
COMMISSION

DEC 12 1995

Herman Dillon, Chairperson
Puyallup Tribal Council
2002 East 28th Street
Tacoma, Washington 98404

Dear Chairman Dillon:

On October 6, 1994, your attorney, Donald Simon, sought reconsideration of a May 13, 1994, decision by Chairman Hope that certain card games could not be "grandfathered" as class II games under 25 U.S.C. § 2703(7)(C). We greatly appreciated your arguments establishing the equitable reasons for a reconsideration and a reversal. Therefore, it is with great regret that we must deny your request for reconsideration. There is no factual basis for a conclusion that the card games in question could be "grandfathered" as class II games.

We commend the Tribe for presenting persuasive equitable reasons in support of its request for reconsideration. These arguments were thoughtful and well considered. However, they could not be relied on to decide an issue that must be based on a factual analysis.

Section 2703(7)(C) of the Indian Gaming Regulatory Act provides that:

Notwithstanding any other provision of this paragraph, the term "class II gaming" includes those card games played in the State of Michigan, the State of North Dakota, the State of South Dakota, or the State of Washington, that were actually operated in such States by an Indian tribe on or before May 1, 1988, but only to the extent of the nature and scope of the card games that were actually operated by an Indian tribe in such State on or before such date, as determined by the Chairman.

Thus, in order for the card games to qualify as class II gaming, such card games had to be "actually operated" by an Indian tribe in one of the four enumerated states on or before May 1, 1988.


Unfortunately, the Tribe was unable to supply the facts necessary to support a conclusion that these cards games were actually operated by the Tribe on or before May 1, 1988. Therefore, we must deny your request for reconsideration.

It has been a pleasure working with the Tribe. We wish every success for the Tribe as it progresses on its gaming endeavors.

Sincerely,



Harold A. Monteau
Chairman



for
Thomas J. Foley
Commissioner



Philip N. Hogen
Commissioner

cc: Donald Simon, Sonosky, Chambers, Sachse & Enderson
Jonathon T. McCoy, Assistant Attorney General